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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 PATH AMERICA, LLC, et al.,

15 Defendants, and

16 POTALA SHORELINE, LLC, et al.,

17 Relief Defendants.

CASE NO. C15-1350JLR

ORDER GRANTING MOTION
TO MODIFY RECEIVERSHIP
ORDER

18 **I. INTRODUCTION**

19 Before the court is Plaintiff Securities and Exchange Commission's ("SEC")
20 motion to modify the order appointing a receiver to include additional relief defendants.¹

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22 ¹ The SEC's motion also sought leave to file a second amended complaint. (Mot. at 3-6.)
The court previously granted this request because Defendants did not oppose that portion of the

(Mot. (Dkt. # 244).) Specifically, the SEC moves to modify the court’s order appointing a receiver to add the following Relief Defendants into the Receivership: (1) Dargey Development, LLC, (2) Dargey Enterprises, LLC, (3) Path Farmer’s Market, LLC, and (4) Dargey Holdings, LLC. (*Id.* at 7-9.) Defendant Lobsang Dargey, and Relief Defendants Dargey Development, Dargey Enterprises, Path Farmer’s Market, Dargey Holdings, and Path Othello, LLC (collectively, “Defendants”) oppose the SEC’s motion. (Resp. (Dkt. # 250); Def. Supp. Resp. (Dkt. # 349).)

On May 19, 2016, the court heard the argument of counsel concerning the SEC’s motion. (*See* 5/12/16 Order (Dkt. # 289) at 2; Min. Entry (Dkt. # 331).) On May 24, 2016, the court issued an order “direct[ing] the parties to submit additional briefing and, if appropriate, evidentiary materials concerning the SEC’s motion.” (5/24/16 Order (Dkt. # 338) at 2.) In response to the court’s order, the SEC filed a supplemental brief and additional evidentiary materials on June 7, 2016. (SEC Supp. Br. (Dkt. # 345); Gadawski Decl. (Dkt. # 346); LaMarca Decl. (Dkt. # 347).) Defendants filed a supplemental responsive brief and additional evidentiary materials on June 14, 2016. (Def. Supp. Resp.; Larsen-Bright Decl. (Dkt. # 350).) On June 21, 2016, the SEC filed a supplemental reply memorandum. (SEC Supp. Reply (Dkt. # 353).)

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SEC’s motion. (5/12/16 Order (Dkt. # 289).) The SEC filed its second amended complaint on May 16, 2016. (SAC (Dkt. # 307).)

1 The court has considered the SEC's motion, all submissions filed in support of the
 2 motion and in opposition thereto, the relevant portions of the record, and the applicable
 3 law. Being fully advised,² the court GRANTS the SEC's motion for the reasons stated
 4 below.

5 II. BACKGROUND

6 The SEC filed this action on August 24, 2015, and sought a temporary restraining
 7 order ("TRO") against Mr. Dargey and nine of the corporate entities that he controls:
 8 Defendants (1) Path America, LLC, (2) Path America SnoCo, LLC, (3) Path America
 9 Farmer's Market, LP, (4) Path America KingCo, LLC, (5) Path America Tower, LP, (6)
 10 Path Tower Seattle, LP, (7) Potala Tower Seattle, LLC, and Relief Defendants (8) Potala
 11 Shoreline, LLC, and (9) Potala Village Kirkland, LLC. (Compl. (Dkt. # 1); TRO Mot.
 12 (Dkt. # 2).) The court entered a TRO that same day (TRO (Dkt. # 9)) and converted the
 13 TRO into a preliminary injunction on October 6, 2015 (PI (Dkt. # 68)).

14 The SEC alleges that Defendants exploited a federal visa program to defraud
 15 investors seeking financial returns and a path to United States residency. (SAC ¶ 1.)
 16 Defendants allegedly raised at least \$125 million through the sale of securities to 250
 17 investors, along with at least \$11 million in additional fees. (*Id.*) The SEC alleges that
 18 Defendants solicited investments predominantly from Chinese citizens, claiming the

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 21 ² In their supplemental response, Defendants request additional oral argument on the
 22 SEC's motion. (*See* Def. Supp. Resp. at title page.) The court, however, has already heard the
 argument of counsel and ordered supplemental briefing. (*See* Min. Entry; 5/24/16 Order at 2.)
 The court does not deem further oral argument to be necessary for disposition of this matter. *See*
 Local Rules W.D. Wash. LCR 7(b)(4).

1 investments would qualify under the EB-5 Program administered by the United States
2 Citizenship and Immigration Services (“USCIS”). (*Id.* ¶ 2.) The EB-5 Program provides
3 that foreign nationals may qualify for United States residency if they make a qualified
4 investment of \$500,000.00 or more in a specified project that is determined to have
5 created or preserved at least 10 jobs in the United States. (*See id.*) The SEC further
6 alleges that using the lure of the EB-5 Program and the promise of investment returns,
7 Defendants targeted Chinese nationals in a scheme to sell securities to finance two real
8 estate development projects: (1) a skyscraper in downtown Seattle (“the Tower Project”),
9 and (2) a mixed-use commercial and residential development containing a farmer’s
10 market in Everett, Washington (“the Farmer’s Market Project”). (*Id.* ¶ 3.) The SEC
11 alleges that rather than use the investors’ money solely for these two projects, Mr. Dargey
12 misappropriated or diverted millions of dollars from these investors for other projects or
13 for his personal use. (*Id.*)

14 On September 21, 2015, in response to the court’s TRO, Defendants filed an
15 accounting with the court. (Accounting (Dkt. ## 31-32).) On September 22, 2015, the
16 SEC moved to appoint a receiver over the nine Dargey-related corporate entities named
17 in the initial complaint. (Rec. Mot. (Dkt. # 38).) On October 22, 2015, the court granted
18 the SEC’s motion. (Rec. Ord. (Dkt. # 88).)

19 On October 2, 2015, the SEC filed a first amended complaint adding three
20 additional Relief Defendants that were identified in Defendants’ accounting. (FAC (Dkt.
21 # 59).) These new Relief Defendants, however, were not initially included in the
22 Receivership. The SEC now seeks to add two of the Relief Defendants named in the first

1 amended complaint to the Receivership: Dargey Development and Dargey Enterprises.
2 (Mot. at 8.) The SEC argues that these two entities were recipients of “substantial
3 funds . . . transferred from Receivership Entities.” (*See* Rec. Int. Rep. (Dkt # 148) at 12.)
4 Dargey Development provided “management, bookkeeping and other services for
5 virtually all affiliated real estate development projects, including the [Tower and
6 Farmer’s Market] Projects.” (*Id.*) Indeed, the Receiver has reported that “[t]he fact that
7 Dargey Development is not a Receivership Entity has . . . hampered the Receiver’s
8 complete understanding of the business and financial activities of the Receivership
9 Entities, in substantial part because he lacks sufficient access to certain records and key
10 employees.” (*Id.*) Thus, the SEC argues that the Receiver needs the information
11 contained in Dargey Enterprises and Dargey Development to determine the fate of the
12 EB-5 investor funds that were transferred from Receivership entities to Dargey
13 Development and Dargey Enterprises.

14 On May 16, 2016, the SEC filed a second amended complaint adding Path
15 Farmer’s Market and Dargey Holdings as additional Relief Defendants. (*See* SAC.) The
16 SEC now also seeks to add these two Relief Defendants to the Receivership as well.
17 (Mot. at 8.) The SEC seeks to add these two entities because they purport to either own
18 outright or own controlling equity in title to the real estate that underlies the Tower
19 Project and the Farmer’s Market Project. (*Id.*) Although EB-5 investors provided the
20 funds to purchase the real estate involved in the Farmer’s Market Project, Mr. Dargey
21 arranged for title to be held in the name of Path Farmer’s Market. (Rec. Int. Rep. Ex. C.)
22 In addition, although EB-5 investors’ funds were also used to purchase the real property

1 for the Tower Project, Defendants assert that Dargey Holdings nevertheless “owns 80%
 2 of the equity in the Tower Project.” (Def. Resp to Rec. Mot. for Auth. to Market and Sell
 3 Assets (Dkt. # 215) at 5.) Dargey Holdings’s assertion of an 80% ownership interest in
 4 the Tower Project is based on its 80% interest in Defendant Potala Tower Seattle—the
 5 entity that holds title to the underlying real property for the Tower Project. (*See* Rec. Int.
 6 Rep. Ex. C.) Because Path Farmer’s Market and Dargey Holdings claim to hold legal
 7 title to the real property underlying the Tower and Farmer’s Market Projects, the SEC
 8 seeks to add these two entities to the Receivership.

9 Defendants oppose adding these four Relief Defendants into the Receivership.
 10 (*See generally* Resp.; Def. Supp. Resp.) Defendants argue that there is no need to place
 11 Dargey Holdings or Path Farmer’s Market into the Receivership because all of the assets
 12 of these entities are already frozen by court order³ and the Receiver already controls the
 13 two projects at issue without adding these entities to the Receivership. (*See* Resp. at 10.)
 14 Defendants also argue that the SEC presents no evidence of any assets going missing or
 15 being misappropriated since the time the Receivership was established. (*See id.*)

16 As noted above, the court held a hearing addressing the SEC’s motion on May, 19,
 17 2016. (*See* Min. Entry.) As a result of this hearing, the court deferred ruling on the
 18 SEC’s motion and ordered the parties to submit additional briefing and, if appropriate,
 19 evidentiary materials. (*See* 5/24/16 Order at 8.) In particular, the court requested that the
 20 SEC provide briefing and evidentiary support regarding three topics raised in the parties’

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 22 ³ (*See* Mot. at 5 n.1 (stating that Mr. Dargey’s interest in Dargey Holdings “is subject to
 the asset freeze in the [c]ourt’s Order Granting Preliminary Injunction”).)

1 prior briefing and at the May 19, 2016, hearing: (1) any evidence of asset dissipation or
 2 misallocation by the four Relief Defendants at issue since the imposition of the asset
 3 freeze and the creation of the Receivership; (2) why the Receiver is hampered in his
 4 understanding of the business and financial activities of the Receivership Entities due to
 5 the absence of the four Relief Defendants; and (3) any other evidence that would aid the
 6 court in its determination. (*Id.* at 7.) The parties' supplemental submissions are now
 7 complete (*see* SEC Supp. Br.; Gadawski Decl.; LaMarca Decl.; Def. Supp. Resp.;
 8 Larsen-Bright Decl.; SEC Supp. Reply), and the court considers the SEC's motion.

9 **III. ANALYSIS**

10 The Ninth Circuit counsels that "appointing a 'receiver is an extraordinary
 11 equitable remedy,' which should be applied with caution." *Canada Life Assur. Co. v.*
 12 *LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009) (quoting *Aviation Supply Corp. v. R.S.B.I.*
 13 *Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993)). The Ninth Circuit lists seven factors
 14 that the court may consider when placing a company into receivership: (1) "whether [the
 15 party] seeking the appointment has a valid claim"; (2) "whether there is fraudulent
 16 conduct or the probability of fraudulent conduct" by the defendant; (3) whether the
 17 property is in imminent danger of "being lost, concealed, injured, diminished in value, or
 18 squandered"; (4) whether legal remedies are inadequate; (5) whether the harm to the
 19 plaintiff by denial of the appointment would outweigh injury to the party opposing
 20 appointment; (6) "the plaintiff's probable success in the action and the possibility of
 21 irreparable injury to the plaintiff's interest in the property"; and (7) "whether [the]
 22 plaintiff's interests sought to be protected will in fact be well-served by receivership." *Id.*

Nevertheless, the Ninth Circuit recognizes “the broad nature of a court’s equitable powers in determining whether or not to appoint a receiver.” *Id.* at 845. Further, the Ninth Circuit cautions that “there is no precise formula for determining when a receiver may be appointed,” and “federal courts consider a variety of factors in making this determination.” *Id.* at 844-45. Indeed, the Ninth Circuit specifically “recognize[s] a court’s authority to appoint a receiver regardless of these factors.” *Id.* at 845. Thus, the court is guided by the factors listed by the Ninth Circuit but will not necessarily consider each of those factors or limit its analysis to those factors alone.

1. Evidence of the Diversion of EB-5 Investor Funds to the Four Relief Defendants at Issue

In its supplemental briefing, the SEC asserts and points to evidence in the record indicating that the four Relief Defendants at issue were the wrongful recipients of ill-gotten money from EB-5 investors. First, Path Farmer’s Market is the entity that holds title to the underlying real property for the Farmer’s Market Project (Rec. Int. Rep. Ex. C), and evidence in the record indicates that this property was purchased with funds diverted from EB-5 investors (*see* SEC Resp. to Mot. to Mod. TRO (Dkt. # 44) at 5 (citing 9/23/15 Smyth Decl. (Dkt. # 45) Ex. 6) & Accounting Ex. B at 242)). Further, although Path Farmer’s Market holds title to the underlying property, Receivership Defendant Path America Farmer’s Market, LP (“PAFM”) is the sole member of Path Farmer’s Market. (Gadawski Decl. ¶¶ 5-6.) EB-5 investor funds from PAFM’s account paid all of Path Farmer’s Market’s expenses including Path Farmer’s Market’s debt to Voya Investment Management. (Dunne Decl. (Dkt. # 65) Ex. A (attaching deed of trust

1 between Path Farmer's Market, LLC and Voya); Accounting at 224, 226, 242, 244
2 (referencing payments to Voya and Newmark Realty from PAFM's account).)

3 Second, the SEC asserts and points to evidence in the record indicating that the
4 underlying real property for the Tower Project was also purchased with funds diverted
5 from EB-5 sources. (SEC Resp. to Mot. to Mod. TRO at 4-5 (citing Accounting Ex. B at
6 121, 211, 239).) In addition, Mr. Dargey transferred an 80% "ownership" interest in the
7 Potala Tower to Dargey Holdings although there is no evidence that the entity provided
8 anything in return. (*See* Gadawski Decl. ¶ 4.)

9 Similarly, evidence in the record indicates that Dargey Enterprises and its
10 successor, Dargey Development, received millions of dollars of diverted EB-5 investor
11 funds. The Receiver's forensic accountant estimates that "[a]pproximately 83% of all
12 deposits made in [Dargey] Enterprises" and "[o]ver 99% of all deposits in [Dargey]
13 Development came from PAFM and Potala Tower." (*Id.* ¶¶ 9, 13.) Even assuming that
14 the payment of "development fees" was disclosed to EB-5 investors and otherwise
15 appropriate as Defendants argue, the amount paid to Dargey Enterprises and Dargey
16 Development, and ascribed to the Farmer's Market Project, exceeded any allowable
17 amounts by nearly a million dollars. (*See id.* ¶ 7 ("... PAFM overpaid development fees
18 in the amount of approximately \$974,560.")) Similarly, calculating "development fees"
19 for the Tower Project results in an overpayment in excess of \$4 million. (*Id.* ¶ 12.)

20 Defendants respond that the foregoing evidence relates solely to pre-receivership
21 diversions "which are completely irrelevant to the current motion." (Def. Supp. Resp. at
22 4.) Defendants assert that "[b]y focusing on pre-receivership events, the SEC effectively

1 | concedes that it is not aware of any alleged dissipation of investor funds since the asset
2 | freeze and receivership orders,” and thus, “[t]he answer to the [c]ourt’s first question is:
3 | ‘No,’ there is no evidence of dissipation or misallocation since the court initiated the
4 | Receivership.” (*Id.* at 5 (underlining in original).)

5 | The court disagrees that the evidence the SEC presents is irrelevant. Although the
6 | SEC has not presented evidence of further dissipation of assets since the asset freeze and
7 | Receivership was initiated, the SEC nevertheless substantiates by specific reference to
8 | evidence in the record its prior assertions that the four entities at issue were involved in
9 | either misallocation of EB-5 investor funds prior to the asset freeze or in the control or
10 | ownership of assets purchased with diverted EB-5 investor funds by specific reference to
11 | evidence in the record. Further, the SEC provides evidence that the absence of these
12 | entities from the Receivership is hampering the Receiver in accomplishing his primary
13 | task of marshaling and preserving all Recoverable Assets.

14 | Finally, although the Receiver may have accounted for investor funds in the nine
15 | entities that are already in the Receivership, EB-5 investor funds placed in the additional
16 | four entities at issue are not yet accounted for. (*See* SEC Supp. Reply at 3.) Defendants
17 | assert that the SEC is asking the court to expand the Receivership “based on speculation
18 | that there might be some missing investor funds somewhere.” (Def. Supp. Resp. at 5.)
19 | Given, however, the evidence the SEC points to in the record of past dissipation of EB-5
20 | investor funds, the court does not view as far-fetched the idea that there may be
21 | additional missing investor funds in the four entities at issue. Indeed, the Receiver
22 | recently found an account for \$64,002.64 that was in the name of Path Farmer’s Market.

(4/29/16 Quarterly Rep. (Dkt. # 284) at 6.) Further, based on Defendants' own Accounting, Dargey Enterprises still owes the Farmer's Market Project significant sums. (See, e.g., Accounting Ex. B at 196 (indicating 10/30/12 check written on Farmer's Market account for \$609,954.84 to "Potala Village" with note "Due from DE (for PV)").) As the SEC notes, these sums have yet to be paid back. (SEC Supp. Reply at at 4-5.) The court finds that the SEC's evidence is relevant to the court's present determination and that it weighs in favor of adding the four Relief Defendants to the Receivership.

2. Evidence of Lost Emails or Documents by Two of the Relief Defendants at Issue

In addition to the foregoing evidence of the diversion of EB-5 investor funds, Dargey Development and Dargey Enterprises failed to maintain certain emails for the majority of their employees. Mr. Dargey's counsel acknowledges that in late October 2015, after the appointment of the Receiver, Dargey Development terminated its Microsoft Exchange email accounts and failed to make the necessary payments to maintain the email accounts for all employees other than Mr. Dargey, Sam Kanner, and Kami Erickson. (LaMarca Decl. ¶¶ 2-5.) Microsoft purged the cloud-based account information thirty days after the accounts were deactivated or terminated, and as a result those files are no longer available from Microsoft. (*Id.*) Further, no one from Dargey Development or its former attorneys copied the cloud-based server information that was

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1 generated after August 24, 2015.⁴ (*Id.* ¶ 4.) Thus, the SEC asserts that information
2 related to employee emails after August 24, 2015, has been irretrievably lost. (*See id.*
3 ¶¶ 2-5.)

4 Defendants do not deny the foregoing chain of events, although their present
5 attorneys state they “are not aware of any facts indicating that anyone understood at the
6 time that deactivation of former employee email accounts (to avoid additional charges)
7 could result in any purging of data by Microsoft” (Larsen-Bright Decl. ¶ 15.)
8 Defendants also insist that “[t]here is no evidence that any relevant information has been
9 lost,” and that “[m]any factors suggest that no relevant information was lost.” (Def.
10 Supp. Resp. at 6-7 (bolding and capitalization omitted); *see also* Larsen-Bright Decl. ¶
11 15.) The point, however, is that now neither the court nor the parties can be sure of this
12 fact. Even if, as Defendants suggest, the parties may be able to retrieve from other
13 sources or locations some or all of the emails that Defendants failed to maintain, there is
14 no way to be certain that the universe of recovered emails is complete. Further, the
15 failure to maintain the email accounts has, at a minimum, rendered recovering the emails
16 more difficult, time-consuming, and costly. Dargey Development and Dargey
17 Enterprises have a track record of at least being careless concerning the retention of
18 relevant information. Bringing them into the Receivership would protect against similar
19 mishaps in the future by requiring them “to preserve and turn over to the Receiver

21 ⁴ The Federal Bureau of Investigation imaged employees’ computers, including email
22 accounts, for several (but not all) Dargey-entity employees when it executed a search warrant on
August 24, 2015. (LaMarca Decl. ¶ 5.)

1 forthwith all paper and electronic information of, and/or relating to, the Receivership
2 Defendants, the Receivership Relief Defendants, and/or all Receivership Property.”
3 (Rec. Ord. at 5.)

4 **3. Evidence that the Receiver’s Work is Hampered**

5 The Receiver has been assigned the duty of marshalling and preserving all
6 “Recoverable Assets” as defined in the Order Appointing Receiver. (*Id.* at 2.) His ability
7 to accomplish this task has been hampered by Mr. Dargey’s disregard for accounting and
8 corporate formalities and the Receiver’s lack of control over intertwining entities which
9 are involved in the control or ownership of Receivership Assets. Specifically, the
10 Receiver has reported to the court as follows:

11 The interrelationships between these entities have complicated the
12 Receiver’s analysis. Specifically, while the majority of the entities the
13 Receiver has identified are not part of the receivership estate, many appear
14 to have been implicated in the control or ownership of Receivership Assets,
15 including the Projects, in the pre-receivership period. For example, Dargey
16 Development, a non-receivership entity, provided management,
17 bookkeeping and other services for virtually all affiliated real estate
18 development projects, including the Projects. The fact that Dargey
19 Development is not a Receivership Entity has therefore hampered the
20 Receiver’s complete understanding of the business and financial activities
21 of the Receivership Entities, in substantial part because he lacks sufficient
22 access to certain records and key employees.

(Rec. Int. Rep. at 12.) Further, the Receiver determined that the myriad transfers to
Dargey Development and Dargey Enterprises could not be further traced:

[S]ubstantial funds were transferred from the Receivership Entities to
Dargey Development, Dargey Enterprises, LLC, and other entities affiliated
with Mr. Dargey. The structure of the relationships between the Dargey
controlled entities means that it is presently impossible for the Receiver to
determine the ultimate fate of these funds after their initial transfers,
meaning that the Receiver cannot currently determine whether there are

1 additional Receivership Assets available for recovery associated with these
2 transfers.

3 (*Id.* at 12-13.)

4 To assist him in the task of tracing and marshalling asserts, the Receiver retained a
5 forensic accountant. (Gadawski Decl. ¶ 3.) However, the Receiver only has access to
6 information relating to the nine Dargey-related entities that are part of the Receivership.
7 (*See* Rec. Ord. at 4-6.) The Receiver does not have access to the four entities at issue
8 here and “has received very limited data regarding [Dargey] Holdings, [Dargey]
9 Enterprises, and [Dargey] Development.” (Gadawski Decl. ¶ 14.) Indeed, “when the
10 receiver team visited the FBI offices to review seized documents,” the team “was not
11 permitted to review or copy any of the documents” for Dargey Holdings, Dargey
12 Enterprises, or Dargey Development, because they were not part of the Receivership.
13 (*Id.*) Thus, the Receiver’s forensic accountant concludes that the “Receiver has virtually
14 no data for [Dargey] Holdings,” and the “data provided to date for [Dargey] Enterprises
15 and [Dargey] Development has primarily been limited to the incomplete ‘Accounting’
16 filed by Defendants on September 21, 2015.” (*Id.* ¶ 15.)⁵ As the Receiver’s forensic
17 accountant states:

18 The lack of access to corporate records, complete books and accounting,
19 and related source documents has caused the Receiver to incur additional

20 ⁵ The individuals who prepared Defendants’ Accounting conceded that it was incomplete,
21 specifying that the preparers did not have access to four bank accounts related to the Farmer’s
22 Market Project and did not include certain bank account information for Dargey Enterprises and
Potala Village. (Accounting ¶ 6; *id.* Ex. A at 6; *id.* Ex. B at 8-9.) Further, the Accounting is
devoid of information related to Dargey Holdings, and it fails to identify or account for a Path
Farmer’s Market bank account that the Receiver recently located. (SEC Supp. Reply at 3.)

1 costs to investigate the diversion of funds, hampered the Receiver's ability
2 to identify potential assets that are traceable to EB-5 investor funds, and
hindered efforts to recover funds for the benefit of the estate.

3 (*Id.* ¶ 15.)

4 Defendants counter that the absence of the four Relief Defendants from the
5 Receivership does not hamper the Receiver because he could obtain the information he
6 seeks by conducting discovery against the FBI. (*See* Def. Supp. Resp. at 6.) As the SEC
7 points out, however, the FBI is not the only source of relevant information in the search
8 for assets. The Receiver has identified multiple potential sources, including Defendants,
9 the United States Attorney's Office, the FBI, pre-receivership counsel, business affiliates
10 of Dargey entities, and other third-parties. (4/29/16 Quarterly Rep. at 2.) Adding the
11 four entities at issue to the Receivership will give the Receiver automatic access to all
12 their books, records, accounts, and other sources of information. (Rec. Ord. §§ II, III,
13 IV.) Allowing the Receiver access to all the books, records, accounts, and other
14 information under the control of the four entities at issue is more efficient and would
15 cause less harm to EB-5 investors than depleting Receivership Assets through costly
16 discovery and motions practice. The court agrees with the SEC that it makes no sense to
17 grant the Receiver access to the records and information of the nine entities currently in
18 the Receivership, but deny the same access with respect to the four Relief Defendants at
19 issue. The court sees no basis for differentiating these two sets of entities, and
20 Defendants offer none.

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4. The Proposal to Restructure the Tower Project

Defendants assert that the SEC's real motivation is "a heavy-handed attempt . . . to prevent Mr. Dargey from defending himself in this case and having proper representation in the pending [Department of Justice] investigation." (Def. Supp. Resp. at 9.) The SEC argues that

[Mr.] Dargey has used his purported ownership [in Dargey Holdings] to inject himself into the transaction [to restructure the Tower Project] itself. If [Dargey] Holdings were made a part of the [R]eceivership, Defendant would retain the right to object, but he would no longer be able to insert himself inappropriately into negotiations, or to unilaterally prevent the sale for his own personal interests, including to secure \$1.8 million in attorney's fees.

(SEC Supp. Br. at 7.) Defendants assert that the SEC's motion "is part of an ongoing effort by the SEC and the [R]eceiver to turn this pre-trial equity receivership into a post-judgment liquidation of [Mr.] Dargey's two largest projects." (Def. Supp. Resp. at 10.)

The court, however, is unaware of any effort by the Receiver to "sell off" the Farmer's Market Project. (*See id.*) Indeed, in his last report, the Receiver stated that he "hope[d] to file a motion in the next quarter seeking approval of his plan for completion of the project." (4/29/16 Quarterly Rep. at 4; *see also* Rec. Mot. to Proceed with Bus. Plan for Potala Marketplace (Dkt. # 373).) With respect to the pending proposal to restructure the Tower Project, the SEC acknowledges that "Defendant would retain the right to object" to any change in the deal as presently proposed and that placing Dargey Holdings within the Receivership will not prevent Mr. Dargey from getting \$1.8 million to pay his attorneys "because the [c]ourt ultimately has the final say on that issue,

1 regardless of whether or not Dargey Holdings is added to the Receivership.” (SEC Supp.
 2 Reply at 5.) The court agrees that the issue of the proposal to restructure the Tower
 3 Project and the provision of \$1.8 million as a part of that deal to pay Mr. Dargey’s
 4 attorneys is a separate issue from the issues raised by the SEC’s present motion and that it
 5 is not a reason to deny the SEC’s motion.⁶

6 **5. Prejudice to Relief Defendants**

7 The SEC asserts and the court agrees that adding these Relief Defendants to The
 8 Receivership will not unduly prejudice them because it will not disrupt any ongoing
 9 business activities. According to Defendants, Dargey Holdings “is a non-operating
 10 holding company” that “has no employees or operations.” (Larsen-Bright Decl. ¶ 3.)
 11 Similarly, Defendants assert that Path Farmer’s Market, LLC is “non-operational” and a
 12 “‘disregarded entity’ for income tax and financial report purposes.” (*Id.* ¶ 5.) And
 13 Dargey Enterprises and Dargey Development “no longer [have] any ongoing operations,
 14 and [their] bank accounts are frozen.” (*Id.* ¶¶ 6, 7.) The court weighs the lack of
 15 prejudice, as well as the foregoing evidence of asset dissipation, destruction of
 16 evidence—whether inadvertent or otherwise—and hampering of the Receiver’s work to
 17 marshal and preserve all Recoverable Assets, and finds that Relief Defendants Dargey
 18 Development, Dargey Enterprises, Path Farmer’s Market, and Dargey Holdings should

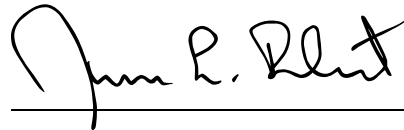
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 21 ⁶ The court notes that, based on the present record, it is disinclined to alter the present
 22 proposal to restructure the Tower Project with respect to the provision of a pool of funds to be
 used for Mr. Dargey’s legal fees. The court will address this issue further in its order on the
 Receiver’s motion for final approval of the disposition of Tower related assets. (*See* Rec. Mot.
 for Final Approval of Disposition of Tower Assets (Dkt. # 356).)

1 be added to the Receivership for the purpose of making sure that all Recoverable Assets
2 are marshaled and preserved pending the resolution of this case.

3 **IV. CONCLUSION**

4 Based on the foregoing analysis, the court GRANTS the SEC's motion to place
5 Relief Defendants Dargey Development, Dargey Enterprises, Path Farmer's Market, and
6 Dargey Holdings into the existing Receivership (Dkt. # 244).

7 Dated this 15th day of July, 2016.

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10 JAMES L. ROBART
11 United States District Judge
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